



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R03-OAR-2013-0789; FRL-9906-68-Region 3]**

**Approval and Promulgation of Air Quality Implementation Plans;  
West Virginia; Minor New Source Review**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted on July 20, 2009 by the State of West Virginia. The proposed revision will expedite the processing of certain preconstruction permits issued under West Virginia's minor New Source Review (NSR) Program. Notably, the revision will allow, in certain circumstances, construction prior to obtaining a permit, and will allow equipment and materials to be delivered and stored onsite prior to permit issuance. This action is being taken under the Clean Air Act (CAA).

**DATES:** Written comments must be received on or before [insert date 30 days from date of publication in the Federal Register].

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA-R03-OAR-2013-0789 by one of the following methods:

- A. [www.regulations.gov](http://www.regulations.gov). Follow the on-line instructions for submitting comments.
- B. E-mail: [cox.kathleen@epa.gov](mailto:cox.kathleen@epa.gov).
- C. Mail: EPA-R03-OAR-2013-0789, Kathleen Cox, Associate Director, Office of Permits and Air Toxics, Mailcode 3AP10, U.S. Environmental Protection Agency, Region III, 1650 Arch

Street, Philadelphia, Pennsylvania 19103.

D. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to Docket ID No. EPA-R03-OAR-2013-0789. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or e-mail. The [www.regulations.gov](http://www.regulations.gov) website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

**Docket:** All documents in the electronic docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted

material, is not placed on the Internet and will be publicly available only in hard copy form.

Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the West Virginia Department of Environmental Protection, Division of Air Quality, 601 57th Street SE, Charleston, West Virginia 25304.

**FOR FURTHER INFORMATION CONTACT:** Gerallyn Duke, (215) 814-2084, or by e-mail at [duke.gerallyn@epa.gov](mailto:duke.gerallyn@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

Section 110(a)(2)(C) of the CAA requires SIPs to have a preconstruction permit program for both major and minor sources. More specifically, SIPs must have the permit programs required under subpart C of title I and must have minor preconstruction programs that assure that the national ambient air quality standards are maintained. Under the minor source permitting rules at 45CSR13, West Virginia implements minor preconstruction program requirements by issuing permits to: (1) Construct and operate new stationary sources which are not major sources, (2) modify non-major stationary sources, (3) make non-major modifications to existing major stationary sources, and (4) relocate non-major stationary sources. These rules also establish requirements for obtaining a temporary permit and Class I and Class II general permit registration.

In 2008, the West Virginia Legislature amended the West Virginia Air Pollution Control Act, W.Va. Code §22-5-1, et. seq., to reduce the timelines for minor source air permit issuance, add a

15-day pre-approval review for permission to commence construction or modification prior to receiving a minor NSR permit or general permit registration, and allow equipment and materials to be delivered and stored onsite prior to permit issuance. The West Virginia Department of Environmental Protection (WVDEP) revised 45CSR13: “Permits for Construction, Modification, Relocation and Operation of Stationary Sources of Air Pollutants, Notification Requirements, Administrative Updates, Temporary Permits, General Permits, Permission to Commence Construction, and Procedures for Evaluation,” to incorporate those changes required by passage of the above amendments to the West Virginia Air Pollution Control Act. The proposed SIP revision consists of these revisions to 45CSR13. The revision submitted by WVDEP for approval into the SIP was adopted by the State Air Pollution Control Board on April 30, 2009 and became effective on June 1, 2009.

## **II. Summary of SIP Revision**

The July 20, 2009 SIP revision will reduce the time allotted for WVDEP to process certain permits. Specifically, the time is reduced from 180 days to 90 days after a permit application is deemed complete for minor NSR permits, from 60 days to 45 days after a complete application is received for temporary minor NSR permits, and from 90 days to 45 days after a general permit registration application is deemed complete for Class II general permits. Class II general permits are issued for sources that are considered to be more significant than sources for which Class I general permits are issued and, unlike Class I general permits, must undergo a 30-day public notice period.

The SIP revision also creates a mechanism for new and modified stationary sources which are not major sources and for major stationary sources proposing non-major modifications to

commence construction prior to obtaining a permit, provided that operation does not commence until a permit is issued. The following are ineligible for permission to commence construction in advance of permit issuance: Sources of hazardous air pollutants subject to CAA subsections 112(g) or 112(j), sources seeking “synthetic minor” permits to avoid otherwise applicable standards, and sources requiring specific case-by-case emission limits under 45CSR21 or 45CSR27. The process to allow commencement of construction in advance of permit issuance also applies to general permits.

Another notable change in the minor NSR rule is to allow equipment and materials to be delivered and stored onsite prior to permit issuance. Finally, other minor clarifying changes to West Virginia’s minor NSR rule are included.

If WVDEP determines that any proposed construction, modification, registration or relocation interferes with attainment or maintenance of an applicable ambient air quality standard, causes or contributes to a violation of an applicable air quality increment, or is inconsistent with the intent and purpose of 45CSR13, WVDEP shall issue an order denying the proposed activity. No permission to commence construction in advance of permit issuance is allowed if WVDEP deems it is inconsistent with any Federal requirement, Federal delegation, Federally approved requirement in any SIP, or Federally approved requirement under the title V permitting program.

The version of 45CSR13 submitted by WVDEP for approval into the SIP includes revisions to the following sections: section 45-13-1 (“General”), section 45-13-4 (“Administrative Updates to Existing Permits and General Permit Registrations”), section 45-13-5 (“Permit Application and Reporting Requirements for Construction of and Modifications to Stationary Sources”), section 45-13-8 (“Public Review Procedures”), and section 45-13-10 (“Permit Transfer, Suspension,

Revocation and Responsibility”). Section 45-13-16 (“Application for Permission to Commence Construction in Advance of Permit Issuance”) is added.

### **III. Proposed Action**

EPA is proposing approval of West Virginia’s SIP submission dated July 20, 2009, which consists of a new version of 45CSR13 that revises West Virginia’s minor NSR Program as follows: (1) Revising provisions to reduce the timelines for issuance of minor NSR permits, temporary permits, and Class II general permits; (2) adding provisions to allow advance preconstruction and to expedite processing of eligible minor NSR permits and general permits; (3) adding provisions to allow equipment and materials to be delivered and stored onsite prior to minor NSR permit issuance; and (4) making minor administrative amendments and clarifications.

EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

### **IV. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);

- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule related to West Virginia's minor NSR Program does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401 et seq.

Dated: January 28, 2014.

Shawn M. Garvin,  
Regional Administrator,  
Region III.

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